

Recommendation to the
Business Administration Committee

Proposed

Regulation for Pre-Employment Criminal History Checks

October 2012

Purpose

Staff requests that the Business Administration Committee concur with initiating the public process to adopt a regulation with the full force and effect of law authorizing criminal history record checks of applicants receiving a conditional offer of employment with the Metropolitan Washington Airports Authority.

Background

- The present pre-employment check conducted by the Airports Authority Public Safety Employee Standards Unit includes a broad view of the applicants' credit records, driving records, employment history and education records.
- Virginia law allows political subdivisions, including the Airports Authority, to enact a regulation which allows conducting criminal history background checks on applicants being considered for employment.
- The addition of this regulation will enhance the Airports Authority's desire to continuously improve hiring of personnel who meet an elevated level of professionalism and integrity.

Recommendation

Staff requests that the Business Administration Committee authorize the President and Chief Executive Officer:

- 1) To publish notice of a proposed addition to the Airports Authority Regulations that authorize obtaining criminal history information for use in pre-employment consideration.
- 2) To conduct public hearings on the proposed regulation and provide opportunities for members of the public to present their views.
- 3) To recommend final action on the proposed Regulation to the Committee and full Board.

**RECOMMENDATION PAPER
TO THE BUSINESS ADMINISTRATION COMMITTEE
PROPOSED REGULATION FOR PRE-EMPLOYMENT
CRIMINAL HISTORY RECORD CHECKS**

OCTOBER 2012

RECOMMENDATION

That the Business Administration Committee authorize the President and Chief Executive Officer to proceed with the process for adopting a regulation with the full force and effect of law for performing criminal history record checks of applicants receiving a conditional offer of employment with the Metropolitan Washington Airports Authority, by publishing notice that the Airports Authority is considering adopting such a regulation, by opening a public comment period, and conducting public hearings.

BACKGROUND

The present process for pre-employment checks on applicants selected for Airports Authority positions conducted by the Public Safety Employee Standards Unit includes a broad review of applicants' credit records, driving records, employment histories, and education records.

The Code of Virginia §19.2-389 (A)(7), provides that criminal history record information may be disseminated to agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for employment whenever, in the interest of public welfare or safety and under a duly enacted ordinance, it is necessary to determine if past criminal conduct would be compatible with the nature of employment under consideration. The Airports Authority currently obtains criminal history record information based on the fingerprints of applicants for police officer positions. (Va. Code §19.2-389 (A)(1))

DISCUSSION

Virginia law allows political subdivisions (the Airports Authority is a "public body, corporate and politic") acting under a duly enacted ordinance to conduct criminal background checks on applicants for employment when it finds that such checks are "in the interest of public welfare or safety." Such checks are conducted following an offer of employment and through the Central Criminal Records Exchange and the FBI. Management feels that conducting criminal background checks on all applicants for Airports Authority employment is an essential component of a suitability for employment investigation conducted by the Public Safety Employee Standards Unit and is a crucial

tool in the continued efforts of the Airports Authority to hire employees who meet the desired level of professionalism and integrity.

Staff has included language in the proposed regulation from the Virginia law (Va. Code § 15.2-1505.1) that sets the standards to be used by Virginia localities which choose to obtain fingerprint-based criminal history record information for use in determining whether to hire a person. The proposed regulation also requires that if an applicant is denied employment because of information appearing in his or her criminal history record, the applicant must be notified and given an opportunity to inspect the information and correct, clarify, explain, or deny it. The proposed regulation would also authorize the Police Department to share the criminal history record information with the Pass & ID Offices at each Airport (as permitted by Va. Code § 19.2-389) so that the applicant would not have to submit fingerprints again.

CONCLUSION

Staff requests that the Business Administration Committee authorize the President and Chief Executive Officer to initiate the process for adopting a regulation with the full force and effect of law for obtaining criminal history record checks of applicants receiving a conditional offer of employment with the Airports Authority, by publishing notice that the Airports Authority is considering adopting the proposed regulation shown in Attachment A, by opening a public comment period, and conducting public hearings. Staff will report on the hearings and comments received on the proposed regulation and make a recommendation to this Committee for final action by the Board of Directors.

Prepared by:
Office of Public Safety
October 2012

ATTACHMENT A

§ 9.11. Criminal History Records Check of Applicants for Authority Employment

- (1) In the interest of public welfare and safety, all applicants to whom a conditional offer of employment with the Authority has been made shall be investigated to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration. Accordingly, the President or his or her designee shall request from the Virginia Central Criminal Records Exchange and the Federal Bureau of Investigation, a criminal record check of each such applicant for Authority employment.
- (2) Each applicant required to undergo a criminal background check, upon receiving a conditional offer of employment, shall submit to fingerprinting and provide personal, descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigations for the purpose of obtaining criminal history record information regarding such applicant.
- (3) Criminal history record information considered in accordance with this section shall include outstanding warrants, pending criminal charges, and records of conviction.
- (4) The President or his or her designee shall review the criminal history record information to determine whether the conviction record, if any, of the applicant is compatible with the nature of the Authority employment under consideration. In making this determination and in determining whether a criminal conviction directly relates to a position, the President or his or her designee shall consider the following criteria:
 - (a) the nature and seriousness of the crime;
 - (b) the relationship of the crime to the work to be performed in the position applied for;
 - (c) the extent to which the position applied for might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;
 - (d) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the position being sought;

- (e) the extent and nature of the person's past criminal activity;
- (f) the age of the person at the time of the commission of the crime;
- (g) the amount of time that has elapsed since the person's last involvement in the commission of a crime;
- (h) the conduct and work activity of the person prior to and following the criminal activity; and
- (i) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

(5) Any applicant who is denied employment on the basis of criminal history record information obtained pursuant to this section will be notified in writing and will be given an opportunity to inspect the information for the purpose of clarifying, explaining, or denying it.

The criminal history information provided in accordance with this section shall be confidential, shall be used solely to assess eligibility for Authority employment and for access to restricted areas of the Airports in compliance with 49 U.S.C. § 44936 and its implementing regulations, and shall not be disseminated except as provided in this section.